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COUNSEL/PARTIES OF RECORD	
OCT 09 2018	
CLERK US DISTRICT COURT DISTRICT OF NEVADA	
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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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BRIAN KEVIN GRAY,

Case No. 3:16-cv-00716-MMD-CBC

Plaintiff,

ORDER

v.

ISIDRO BACA, *et al.*,

Defendants.

**I. DISCUSSION**

On December 22, 2017, the Court issued a screening order that gave Plaintiff leave to amend his complaint. (ECF No. 6). In the screening order, the Court informed Plaintiff that, if he did not amend his complaint, the actions would proceed against Defendants Ward, Wickham, Baca, Aranas, Marks, Brockaway, and pharmacy nurse Jennifer on Count I, against pharmacy nurse Jennifer on Count II, and against Brockaway on Count III only. (ECF No. 6 at 12). On January 9, 2018, Plaintiff filed a first amended complaint. (ECF No. 8).

Now before the Court is Plaintiff's motion to voluntarily withdraw his first amended complaint and proceed with his original complaint (ECF No. 12). The Court grants that motion. Therefore, pursuant to the screening order, this action shall proceed against Defendants Ward, Wickham, Baca, Aranas, Marks, Brockaway, and pharmacy nurse

1 Jennifer on Count I, against pharmacy nurse Jennifer on Count II, and against Brockaway  
2 on Count III.

3 **II. CONCLUSION**

4 For the foregoing reasons, IT IS ORDERED that Plaintiff's motion to voluntarily  
5 withdraw his first amended complaint and proceed with his original complaint (ECF No.  
6 12) is granted.

7 IT IS ORDERED that the Clerk of the Court will strike the first amended complaint  
8 (ECF No. 8).

9 IT IS ORDERED that the operative complaint is the original complaint (ECF No.  
10 7).

11 IT IS FURTHER ORDERED that pursuant to the Court's screening order (ECF No.  
12 6), this action shall proceed against Defendants Ward, Wickham, Baca, Aranas, Marks,  
13 Brockaway, and pharmacy nurse Jennifer on Count I, against pharmacy nurse Jennifer  
14 on Count II, and against Brockaway on Count III.

15 IT IS FURTHER ORDERED that given the nature of the claim(s) that the Court has  
16 permitted to proceed, this action is STAYED for ninety (90) days to allow Plaintiff and  
17 Defendant(s) an opportunity to settle their dispute before the \$350.00 filing fee is paid, an  
18 answer is filed, or the discovery process begins. During this ninety-day stay period, no  
19 other pleadings or papers shall be filed in this case, and the parties shall not engage in  
20 any discovery. The Court will refer this case to the Court's Inmate Early Mediation  
21 Program, and the Court will enter a subsequent order. Regardless, on or before ninety  
22 (90) days from the date this order is entered, the Office of the Attorney General shall file  
23 the report form attached to this order regarding the results of the 90-day stay, even if a  
24 stipulation for dismissal is entered prior to the end of the 90-day stay. If the parties  
25 proceed with this action, the Court will then issue an order setting a date for Defendants  
26 to file an answer or other response. Following the filing of an answer, the Court will issue  
27 a scheduling order setting discovery and dispositive motion deadlines.  
28

1 IT IS FURTHER ORDERED that "settlement" may or may not include payment of  
2 money damages. It also may or may not include an agreement to resolve Plaintiff's issues  
3 differently. A compromise agreement is one in which neither party is completely satisfied  
4 with the result, but both have given something up and both have obtained something in  
5 return.

6 IT IS FURTHER ORDERED that if the case does not settle, Plaintiff will be required  
7 to pay the full \$350.00 filing fee. This fee cannot be waived. If Plaintiff is allowed to  
8 proceed in forma pauperis, the fee will be paid in installments from his prison trust  
9 account. 28 U.S.C. § 1915(b). If Plaintiff is not allowed to proceed in forma pauperis, the  
10 \$350.00 will be due immediately.

11 IT IS FURTHER ORDERED that if any party seeks to have this case excluded from  
12 the inmate mediation program, that party shall file a "motion to exclude case from  
13 mediation" on or before twenty-one (21) days from the date of this order. The responding  
14 party shall have seven (7) days to file a response. No reply shall be filed. Thereafter, the  
15 Court will issue an order, set the matter for hearing, or both.

16 IT IS FURTHER ORDERED that the Clerk of the Court shall electronically SERVE  
17 a copy of this order, the original screening order (ECF No. 6) and a copy of Plaintiff's  
18 original complaint (ECF No. 7) on the Office of the Attorney General of the State of  
19 Nevada, by adding the Attorney General of the State of Nevada to the docket sheet. This  
20 does not indicate acceptance of service.

21 IT IS FURTHER ORDERED that the Attorney General's Office shall advise the  
22 Court within twenty-one (21) days of the date of the entry of this order whether it will enter  
23 a limited notice of appearance on behalf of Defendants for the purpose of settlement. No

24 ///

25 ///

26 ///

1 defenses or objections, including lack of service, shall be waived as a result of the filing  
2 of the limited notice of appearance.

3 DATED THIS 9<sup>th</sup> day of ~~October~~ 2018.

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6 UNITED STATES MAGISTRATE JUDGE  
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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

BRIAN KEVIN GRAY,  
Plaintiff,  
  
v.  
  
ISIDRO BACA, et al.,  
Defendants.

Case No. 3:16-cv-00716-MMD-CBC  
REPORT OF ATTORNEY GENERAL  
RE: RESULTS OF 90-DAY STAY

**NOTE: ONLY THE OFFICE OF THE ATTORNEY GENERAL SHALL FILE THIS FORM.  
THE INMATE PLAINTIFF SHALL NOT FILE THIS FORM.**

On \_\_\_\_\_ *[the date of the issuance of the screening order]*, the Court issued its screening order stating that it had conducted its screening pursuant to 28 U.S.C. § 1915A, and that certain specified claims in this case would proceed. The Court ordered the Office of the Attorney General of the State of Nevada to file a report ninety (90) days after the date of the entry of the Court's screening order to indicate the status of the case at the end of the 90-day stay. By filing this form, the Office of the Attorney General hereby complies.

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## REPORT FORM

[Identify which of the following two situations (identified in bold type) describes the case, and follow the instructions corresponding to the proper statement.]

**Situation One: Mediated Case: The case was assigned to mediation by a court-appointed mediator during the 90-day stay.** [If this statement is accurate, check ONE of the six statements below and fill in any additional information as required, then proceed to the signature block.]

\_\_\_\_\_ A mediation session with a court-appointed mediator was held on \_\_\_\_\_ [enter date], and as of this date, the parties have reached a settlement (even if paperwork to memorialize the settlement remains to be completed). (If this box is checked, the parties are on notice that they must **SEPARATELY** file either a contemporaneous stipulation of dismissal or a motion requesting that the Court continue the stay in the case until a specified date upon which they will file a stipulation of dismissal.)

\_\_\_\_\_ A mediation session with a court-appointed mediator was held on \_\_\_\_\_ [enter date], and as of this date, the parties have not reached a settlement. The Office of the Attorney General therefore informs the Court of its intent to proceed with this action.

\_\_\_\_\_ No mediation session with a court-appointed mediator was held during the 90-day stay, but the parties have nevertheless settled the case. (If this box is checked, the parties are on notice that they must **SEPARATELY** file a contemporaneous stipulation of dismissal or a motion requesting that the Court continue the stay in this case until a specified date upon which they will file a stipulation of dismissal.)

\_\_\_\_\_ No mediation session with a court-appointed mediator was held during the 90-day stay, but one is currently scheduled for \_\_\_\_\_ [enter date].

\_\_\_\_\_ No mediation session with a court-appointed mediator was held during the 90-day stay, and as of this date, no date certain has been scheduled for such a session.

\_\_\_\_\_ None of the above five statements describes the status of this case. Contemporaneously with the filing of this report, the Office of the Attorney General of the State of Nevada is filing a separate document detailing the status of this case.

\* \* \* \* \*

**Situation Two: Informal Settlement Discussions Case: The case was NOT assigned to mediation with a court-appointed mediator during the 90-day stay; rather, the parties were encouraged to engage in informal settlement negotiations.** [If this statement is accurate, check ONE of the four statements below and fill in any additional information as required, then proceed to the signature block.]

\_\_\_\_\_ The parties engaged in settlement discussions and as of this date, the parties have reached a settlement (even if the paperwork to memorialize the settlement remains to be completed). (If this box is checked, the parties are on notice that they must **SEPARATELY** file either a contemporaneous stipulation of dismissal or a motion requesting that the Court continue the stay in this case until a specified date upon which they will file a stipulation of dismissal.)

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\_\_\_\_\_ The parties engaged in settlement discussions and as of this date, the parties have not reached a settlement. The Office of the Attorney General therefore informs the Court of its intent to proceed with this action.

\_\_\_\_\_ The parties have not engaged in settlement discussions and as of this date, the parties have not reached a settlement. The Office of the Attorney General therefore informs the Court of its intent to proceed with this action.

\_\_\_\_\_ None of the above three statements fully describes the status of this case. Contemporaneously with the filing of this report, the Office of the Attorney General of the State of Nevada is filing a separate document detailing the status of this case.

Submitted this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by:

Attorney Name:	_____	_____
	Print	Signature

Address:	_____	Phone: _____
	_____	_____
		Email: _____
		_____